

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking (June 9, 2020)

Let's start with the numbers.

More than 113,000 people have died in the cruel pandemic that is affecting communities across the country. Nearly 43 million Americans have filed for unemployment benefits as the economy reels from this public health catastrophe. The unemployment rate is now at its highest levels since the Great Depression. Protests have erupted in all 50 states as we face a nationwide reckoning over racial injustice.

We can't say with certainty where this overwhelming series of events takes us next. I pray it is toward a more just future. I hope it is one where the truths we hold to be self-evident are apparent not only in word but in deed.

But we can say with certainty that state and local governments are on the front line in all of these crises. That means they are dealing with an epic combination of illness, joblessness, food insecurity, social distancing, and public safety challenges—at the same time.

Moreover, all of this work is being carried out with fewer resources than ever before. That's because social distancing has reduced consumer spending and wages, causing tax revenues to plummet. At the same time, the demand for funding basic social services has gone up. This has created an unprecedented strain on state and local budgets.

So understandably mayors and governors across the country are ringing the alarm. They are wrestling with historic crises and struggling to find a new way forward in a period of profound civil unrest. They want to be heard by Washington. But today's decision demonstrates that at the Federal Communications Commission we're not listening.

Let me explain why. Today's decision seeks to clarify how the agency interprets Section 6409 of the Middle Class Tax Relief and Job Creation Act. That sounds technocratic. But it goes to the heart of what role cities and towns get to play in decisions about the communications infrastructure in their backyard. That's important for communities across the country and for our national wireless ambitions.

Today the FCC adopts a declaratory ruling that requires every state and local government to immediately review and update their current ordinances, policies, and application systems involving wireless towers. They have to rework the way they process new requests, how they measure tower height, what they do with requests to add more equipment, and how they conceal structures to preserve the visual character of their communities. Addressing these things is not

unreasonable. But these clarifications can be hard to put into practice and they were shared with state and local governments for the first time only three weeks ago—and my goodness, they’ve been busy.

So it’s no wonder that we have heard from the National League of Cities. We’ve heard from the United States Conference of Mayors. We’ve heard from the National Association of Counties. We’ve heard from the National Association of Telecommunications Officers and Advisors. We’ve heard from the National Association of Towns and Townships. Together they represent more than 19,000 cities, 3,069 counties, and 10,000 towns across the country.

You know what they want? It’s not radical. They want a bit more time to weigh in on our decision, so they can be in a better place to implement it. They want this time because their resources are strained by a deadly virus, economic calamity, and civil unrest. As 24 members of the United States House of Representatives Committee on Energy and Commerce noted last week, “[i]f local governments are forced to respond to this Declaratory Ruling instead of focusing on their public health and safety responses, it very well may put Americans health and safety at risk.”

But the FCC has decided to ignore this modest request for time to review. I don’t get it. Why can’t we acknowledge what is happening around us?

The sad truth is that this is not the first time we’ve given short shrift to the pleas of local governments who are strained by these historic days. It was just a few weeks ago when city officials and local firefighters asked the FCC to give them more time to weigh in on the court remand of our misguided decision to roll back net neutrality. But we didn’t grant their request.

However, when companies suggested they needed more time to clear the 3.5 GHz band because of the pandemic, we were quick to oblige. We pushed back the start of our next spectrum auction too, again citing business disruptions caused by the coronavirus. The FCC even granted an extension of time to a foreign company it is investigating as a national security threat to the United States.

Why can’t we offer the same courtesy to state and local governments? The law demonstrates a clear congressional policy in favor of removing locally imposed and unreasonably discriminatory obstacles to modifying existing facilities in order to foster the rapid deployment of wireless infrastructure. I know. As congressional staff, I helped write it. But some of the decisions we make today seem to be less about speeding up routine approvals under this law and more about lowering the costs of non-routine approvals by retrofitting them into this process too.

If we want to see infrastructure expand broadly and equitably across this country it takes federal and state and local authorities working together to do so. History proves this is true. And in these historic times this agency should not be ramrodding this effort through without listening to cities and towns across the country. They called for a bit more time. But the Federal Communications Commission hung up. I dissent.